

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
J & W Promotions, Inc.)	
)	File Number EB-02-AT-277
Licensee of AM Radio Station WAPZ,)	
Wetumpka, Alabama, and Owner of Unregistered)	NAL/Acct.No. 200232480016
Antenna Structure Located at 32° 29' 06" N)	
Latitude by 086° 12' 25" W Longitude)	FRN 0007-4715-50
Wetumpka, Alabama)))	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 28, 2002

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("NAL"), we find J & W Promotions, Inc., licensee of AM radio station WAPZ, Wetumpka, Alabama, and owner of unregistered antenna structure located at 32° 29' 06" North latitude by 086° 12' 25" West longitude in Wetumpka, Alabama, apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000) for willful violation of Sections 11.35(a), 17.4(a), and 73.49 of the Commission's Rules ("Rules").¹ Specifically, we find J & W Promotions, Inc. apparently liable for failing to ensure Emergency Alert System ("EAS") equipment was installed and operational, failing to register their antenna structure with the Commission, and failing to maintain an effective locked fence around the base of the antenna structure.

II. BACKGROUND

2. On July 25, 2002, an agent from the FCC Enforcement Bureau's Atlanta Field Office inspected station WAPZ's antenna structure located at 32° 29' 06" North latitude by 086° 12' 25" West longitude near Wetumpka, Alabama. No Antenna Structure Registration ("ASR") number was observed anywhere near the base of the structure.

3. Still on July 25, 2002, the agent inspected radio station WAPZ in Wetumpka, Alabama accompanied by the CEO of the station, Mr. Robert Henderson. At the time of the inspection, the station did not have EAS equipment installed or operational. There were no station logs that would indicate the EAS equipment had been removed for repairs or that there had ever been operational EAS equipment used at the station. Additionally, Mr. Henderson confirmed that the antenna structure was owned by the

¹ 47 C.F.R. §§ 11.35(a), 17.4(a), and 73.49.

licensee. Mr. Henderson stated that he believed that the structure was properly registered, but could provide no documentation to support this claim. Also during this inspection, the agent found the base fencing enclosing the station's AM antenna tower to be deficient in that the top board of the fencing was missing allowing access to the base of the tower. This tower had radio frequency potential at its base.

4. On July 29, 2002, the agent conducted a search of the Commission's ASR database and found that the antenna structure for station WAPZ had not been registered, and no applications filed to register the structure.

III. DISCUSSION

5. Section 11.35(a) of the Rules sets forth that broadcast stations are responsible for ensuring that EAS encoders, EAS decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations are in operation. On July 25, 2002, there was no installed EAS equipment at the studios of WAPZ. In addition, there were no station logs that would indicate the EAS equipment had been removed for repairs or that there had ever been operational EAS equipment used at the station.²

6. Section 17.4(a) of the Rules states that, "[e]ffective July 1, 1996, the owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission." Mr. Henderson stated that J & W Promotions, Inc. owned the antenna structure used as part of radio station WAPZ. This structure required notice to the FAA, and thus required registration with the Commission, because the structure height was 300 feet.³ There were no Commission records indicating that this structure was registered.

7. Section 73.49 of the Rules requires antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences. On July 25, 2002, the agent found that the top horizontal plank on the tower fence was not in place, allowing unrestricted access to the base of the tower.

8. Based on the evidence before us, we find J & W Promotions, Inc., willfully⁴ violated Sections 11.35(a), 17.4(a), and 73.49 of the Rules by failing to ensure that EAS equipment was installed and operational at WAPZ, by failing to register WAPZ's antenna structure with the Commission, and by failing to maintain an effective locked fence enclosing its antenna tower.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for EAS equipment

² EAS activations and tests, failures to receive such tests, and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

³ See 47 C.F.R. § 17.7(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ 47 C.F.R. § 1.80(b)(4).

not installed or operational is \$8,000, the base forfeiture amount for failing to register its antenna structure (failure to file required forms or information) is \$3,000, and the base forfeiture amount for failing to maintain effective locked AM tower fencing is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.”⁶ Considering the entire record and applying the factors listed above, this case warrants an \$18,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ J & W Promotions, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for willful violation of Sections 11.35(a), 17.4(a), and 73.49 of the Rules by failing to ensure that EAS equipment was installed and operational at station WAPZ, failing to register WAPZ’s antenna structure with the Commission, and failing to maintain effective AM tower fencing around the base of the antenna structure for WAPZ.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, J & W Promotions, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Request for payment of the full amount of *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial

⁶ 47 U.S.C. § 503 (b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁹ See 47 C.F.R. § 1.1914.

status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to J & W Promotions, Inc., 2821 U.S. Hwy 231. Wetumpka, Alabama, 36092.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office
Enforcement Bureau